How to design a fair model for remunerating authors
Göttingen 2015

Philipp Homar
Background of the study

- **Sparkling Science Research Project**: „From 'User-Generated-Content' to 'User-Generated-Copyright” (funded by the Austrian Ministry of Science, Research and Economy)

- Interdisciplinary Approach / “Citizen Science”
  - Inclusion of young students, aged 14-20 (digital natives), as “young scientists”

- **Goal**: Definition of requirements of a modern, well-balanced copyright system in the light of the “prosumer”-paradigm.
Focus: Remuneration of Authors

- Media coverage:
- Streaming Services

<table>
<thead>
<tr>
<th>Category</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Record Companies</td>
<td>4.56</td>
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<td>Streaming Service</td>
<td>2.08</td>
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<td>Taxes</td>
<td>1.67</td>
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<td>Songwriters, Composers</td>
<td>1.00</td>
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<tr>
<td>Musicians</td>
<td>0.68</td>
</tr>
</tbody>
</table>

Source: SNEP, EY
Focus: Remuneration of Authors

- European Parliament resolution (2014/2256(INI))
  - “...having regard to the competitive advantage and growing power of a number of Internet intermediaries and to the negative impact of this situation on authors’ creative potential”
  - “Points out that copyright is the tangible means of ensuring that creators are remunerated and that the creative process is funded;”
  - “providing authors of literary and artistic works with sufficient recognition and protection of their rights;”
  - “... stresses that authors and performers must receive fair remuneration in the digital environment and in the analogue world alike;”
Stakeholders - Interests

Creative Community

- **Authors**
  - Dissemination
  - Income

- **Performing Artists**

Intermediaries

- **Publishers, Producers etc**

- **Other Intermediaries**

- **Collecting Societies**

Public

- **Users**
  - Access

- **Prosumers**
  - Use / Sharing (UGC)

- **Educational Institutions**
  - not paying twice for research results

**HOMAR: HOW TO DESIGN A FAIR MODEL FOR REMUNERATING AUTHORS, GÖTTINGEN 2015**
Copyright & Remuneration for authors

- Exclusive Rights

- Limitation of scope of protection
  (idea/expression dichotomy, originality, duration)

- Limitations and Exceptions
  - „free uses“
  - „statutory licenses“

- Collective management of rights
- Compulsory licenses

= remuneration
= no remuneration
= no remuneration
= „fair compensation“
= „equ. remuneration“
= remuneration
"Cash Flow" of remuneration

Source: PwC, An economic analysis of copyright, secondary copyright and collective licensing (2011)
Remuneration rights

- Strengthening financial interests of authors
  - Jäger, ecolex 2015, 681; Leistner, GRUR-Int. 2015, 681; Hilty in FS Schricker, 325; Melichar in Schricker/Loewenheim, Urheberrecht⁴, Vor §§ 44a ff Rz 15; Metzger in Obergfell [Hrsg.] Zehn Jahre reformiertes Urhebervertragsrecht, 54

- ALAI Congress 2015

- Austria Copyright Amendment 2015
  - Levies on hard-disks ("Speichermedienvergütung" Sec 42b UrhG)
  - E-Learning (Sec 42g UrhG)
Austria

- Public lending right (Sec 16a §2 UrhG)
- Resale right (Sec 16b §1 UrhG)
- Reproductions for private or own purposes „Private Copying“ (Sec 42b §1 UrhG)
- Reprographic Reproductions (Sec 42b §2 UrhG)
- Uses for impaired persons (Sec 42d §4 UrhG)
- E-Learning (Sec 42g §3 UrhG)
- Incorporation of literary and art work in educational works (Sec 45 §3, Sec 51 §2, and Sec 54 §2 UrhG)
Austria

- Use of audio and audiovisual material in libraries (Sec 56b §1 UrhG)
- Public performance of cinematographic works in schools and universities (Sec 56c §2 UrhG)
- Public performance of cinematographic works in lodging establishments (Sec 56d §2 UrhG)
- Orphan works (Sec 56e §6 UrhG)
- Broadcasting and communication to the public by commercially produced phonograms (Sec 76 §3 UrhG)
Future?

- **ALAI 2015** “Current technical challenges make it seem more future-proof than ever to base the law not on rights to prohibit use but on remuneration rights”

- **General exception for scientific research?**
  - *de la Durantaye,* Allgemeine Bildungs- und Wissenschaftsschranke.

- **UGC?**
  - *Bauer,* User Generated Content.

- **Culture Flatrate?**
  - *Spindler,* Rechtsprobleme und wirtschaftliche Vertretbarkeit einer Kulturflatrate; *Büchele,* Content Flatrate und Urheberrecht.
Questions regarding:

- Transparency?
- Accuracy?
- Effectiveness?
Sec 38 §1 UrhG:

„The author’s statutory rights to remuneration shall be shared equally by the film producer and the author, provided that they are not unwaivable."

Remuneration rights unwaivable?

CJEU C-277/10 – Luksan/van der Let

See Sec 63a German Copyright Act
“59. Notes that private copying levies should be governed in such a way as to inform citizens of the actual amount of the levy, its purpose and how it is going to be used;”

“60. Stresses that digital levies should be made more transparent and optimised to safeguard rightholder and consumer rights and by taking into account Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market;”

“61. Stresses the importance of bringing more clarity and transparency to the copyright regime for copyright users, in particular with regard to user-generated content and copyright levies, in order to foster creativity and the further development of online platforms, and to ensure appropriate remuneration of copyright holders;”
“F. ...the fact that the management of copyright requires particular emphasis on the **transparency of the flows of remuneration collected**, distributed and paid to rightholders by collecting societies, including for private copying;”

“P. ...a European framework needs to be laid down in order to afford a **high degree of transparency** for rightholders...”

“17. ...**consumers must be informed** of the **amount, purpose and use** of the **levy** they pay;”

“21. **Urges the Member States to ensure greater transparency** regarding the **allocation** of proceeds from **private copying levies**;”
Accuracy

- Partial phase-out of remuneration?
- Levies for private copying
  - Streaming
  - Cloud Computing

- CJEU C-463/12 – Copydan
- CJEU C-435/12 – ACI Adam
Accuracy

- Private copying levies in the cloud
- Fair compensation vs equitable remuneration?
  - Individual licensing vs collective licensing
  - DRM
  - CJEU C-457/11-C-460/11 – VG Wort
  - CJEU C-463/12 – Copydan

- “Double dipping”?
Effectiveness

- Remuneration – intensity of use?

- Allocation of levies between authors and intermediaries
  - CJEU C-572/13 – *Hewlett-Packard Belgium/Reprobel*

- Remuneration for new forms of distribution?
Preliminary Conclusions

- Clear structures („Unbundling“?)
  - Defining rightholders entitled to remuneration
  - CMOs
  - Two-tier system?

- Allocation of revenues
  - Authors – Intermediaries

- Purpose of collective remuneration in digital environment
  - UGC?